RECENT DEVELOPMENTS

*Gianelli Money Purchase Plan & Trust v. ADM Investor Services, Inc.**

I. INTRODUCTION

Courts are loathe to vacate arbitration awards. Under the Federal Arbitration Act (FAA),[1] arbitration awards are presumed to be valid and are generally free from judicial review.[2] In general, arbitration proceedings need not meet the formal procedural requirements of court adjudication,[3] and awards are generally not reviewable for errors or misinterpretations of fact or law.[4] Arbitration awards are usually vacated only under the grounds specified in section 10 of the FAA.[5] The burden of establishing such grounds rests on the party seeking to upset the award.[6]

Aside from "corruption, fraud, or undue means,"[7] which also encompasses parties to the arbitration,[8] vacatur of an award under section 10 of the FAA focuses on the role of the arbitrator only.[9] One of the more problematic grounds for vacatur is "evident partiality" as delineated in section 10(a) of the Act.[10] It has generally been difficult for courts to

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* 146 F.3d 1309 (11th Cir. 1998).

[1] 9 U.S.C. §§ 1-16 (1994).

[2] *See* 9 U.S.C. § 10(a)-(b) (1994).

[3] *See* JOHN W. COOLEY & STEVEN LUBET, ARBITRATION ADVOCACY 6 (1997).

[4] *See id.* at 211.

[5] *See id.* at 210.

[6] *See id.* at 211.

[7] 9 U.S.C. § 10(a)(1).

[8] *See* 4 IAN MACNEIL ET AL., FEDERAL ARBITRATION LAW § 40.2 (1994).

[9] *See* 9 U.S.C. § 10(a)(2)-(4). Subsection (a)(2) considers partiality or corruption of the arbitrator; (a)(3) considers misconduct of the arbitrator; (a)(4) considers abuse/misuse of power by the arbitrator.

[10] The FAA states:

> (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
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> . . . .
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> (2) Where there was evident partiality or corruption in the arbitrators, or either of them.

9 U.S.C. § 10(a).

formulate a precise legal standard to the concept of evident partiality.[11] For a showing of evident partiality, the standard is that there has to be more than just the appearance of bias, but less than actual bias.[12] Exactly what this means in practical terms has been somewhat elusive.

Generally, the grounds for vacating arbitration awards are narrower than those under which courts generally overturn decisions.[13] Because of this, the courts have vacated awards in very few of the cases in which they have been challenged.[14] The argument of bias has met with little success.[15] Despite the implications of the statute,[16] the American Arbitration Association (AAA),[17] the National Association of Securities Dealers (NASD) rules,[18] and the Supreme Court,[19] "implied partiality" has been most often held to mean "actual partiality,"[20] putting a heavy burden of proof on the moving party.[21]

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[11] *See* Aetna Cas. & Sur. Co. v. Grabbert, 590 A.2d 88, 96 (R.I. 1991) (citing International Bhd. of Elec. Workers, Local Union No. 323 v. Coral Elec. Corp., 104 F.R.D. 88, 89 (S.D. Fla. 1985)).

[12] *See id.*

[13] *See* Andrew M. Campbell, Annotation, *Construction and Application of § 10(a)(1)-(3) of Federal Arbitration Act (9 U.S.C.S. § 10(a)(1)-(3)) Providing for Vacating of Arbitration Awards Where Award Procured by Fraud, Corruption, or Undue Means, Where Arbitrators Evidence Partiality or Corruption and Where Arbitrators Engage in Particular Acts of Misbehavior*, 141 A.L.R. FED. 1, 35 (1997); *see also infra* Part III.

[14] *See* Campbell, *supra* note 13, at 35. According to this one author, courts vacate arbitration awards in only about 10% of challenges. *See id.*

[15] *See id.* The compilation of cases indicates that § 10(a)(4) vacaturs outnumber all other successful grounds combined. *See id.*

[16] *See* 9 U.S.C. § 10(a)(2) (1994).

[17] "An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias." American Arbitration Association, *The Code of Ethics for Arbitrators in Commercial Disputes, Canon II* (visited Sept. 28, 1998) <http://www.adr.org/code.html>.

[18] The NASD rules impose a continuing obligation for arbitrators to disclose relationships "that are likely to affect impartiality or might reasonably create an *appearance* of partiality or bias." NATIONAL ASS'N OF SEC. DEALERS, NASD CODE OF ARBITRATION PROCEDURE, IM 10312(a)(2), *reprinted in* W. REESE BADER, SECURITIES ARBITRATION: PRACTICE AND FORMS at NASD-17 (1997) (emphasis added).

[19] *See generally* Commonwealth Coatings Corp. v. Continental Cas. Co., 393 U.S. 145 (1968) (plurality opinion).

[20] "[T]he alleged partiality must be 'direct, definite, and capable of demonstration rather than remote, uncertain, and speculative.'" Lifecare Int'l, Inc. v. CD Med., Inc., 68 F.3d 429, 433 (11th Cir. 1995) (quoting Middlesex Mut. Ins. Co. v. Levine, 675

In the recent decision of *Gianelli Money Purchase Plan & Trust v. ADM Investor Services, Inc.*, the Eleventh Circuit Court of Appeals took a step in clarifying the implied partiality standard in that circuit, aligning it with the majority view.[22] In its holding, the court effectively ruled out the possibility of vacatur for bias unless actual bias is shown. In so doing, the court set out a clear test for determining bias and overturned a previous district court opinion.

II. THE FACTS OF THE CASE

In 1992, Basic Commodities (Basic) entered into an agreement with ADM Investor Services, Inc. (ADM).[23] Under this agreement, Basic was to refer customers to ADM; ADM would then execute commodities trades for these customers.[24] As part of their agreement, Basic had agreed to indemnify ADM for any losses suffered by Basic clients.[25]

One of the customers of Basic was Gianelli Money Purchase Plan and Trust (Gianelli).[26] During a nine-month period in 1994–1995, Gianelli lost approximately $100,000 as a result of investments in the futures market through ADM and Basic.[27] Gianelli, blaming the losses on mismanagement by Basic's president, Kent C. Kelley, filed a claim against ADM with the American Arbitration Association, asserting that ADM was liable for the losses caused by Kelley based on a theory of agency.[28]

The arbitrator selected by both parties was Keith Houck.[29] Unbeknownst to Gianelli at the time of the selection, Houck had worked for the law firm that had represented Kelley in 1992—Gray, Harris & Robinson (Gray Harris).[30] Shortly before the arbitration hearing, Gianelli

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F.2d 1197, 1201 (11th Cir. 1982)).

[21] Given the poor track record in obtaining vacatur on the ground of bias, it is clear that parties bear a heavy burden. *See supra* note 15; *see also* Drexel Burnham Lambert, Inc. v. Pyles, 701 F. Supp. 217, 220 (N.D. Ga. 1988).

[22] 146 F.3d 1309, 1310 (11th Cir. 1998).

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See id.*

discovered this fact.[31] Mr. Houck then asserted that he did not remember the 1992 representation and signed an Arbitrator's Oath of full disclosure.[32] Mr. Kelley also stated that the 1992 representation by Gray Harris was an isolated incident.[33] Based on these representations, Gianelli accepted Houck as the arbitrator.[34]

Subsequent to the arbitration decision favoring ADM, Gianelli discovered that Kelley and Gray Harris indeed had an ongoing attorney-client relationship for over sixteen years.[35] Most of this relationship predated Houck's employment.[36] Gianelli then filed a petition to the district court to vacate the arbitration award, contending that Houck, because of his employment by Gray Harris and relationship with Kelley, had shown partiality to ADM.[37]

The issue was heard before a magistrate judge, who recommended that the district court vacate the arbitration award.[38] Concluding that "the arbitrator had displayed 'evident partiality' because of [the] past business [relationship],"[39] the district court adopted the recommendation of vacatur, from which ADM appealed.[40]

The court of appeals reversed. In discussing the standard of review, the court concluded that orders vacating arbitration awards are reviewed for clear error with respect to facts and de novo with respect to the legal conclusions.[41] On both these points, the court found the district court in error.

First, as a matter of fact, it found that there was not evidence of partiality. In reaching this conclusion, the court viewed evident partiality from the perspective of the arbitrator, not the party to the dispute.[42] According to the appellate court, the district court had found that "Kelley's frequent business contacts with Gray Harris . . . would lead a reasonable

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[31] *See id.*

[32] *See id.*

[33] *See id.*

[34] *See id.*

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *See id.*

[39] *Id.* at 1309.

[40] *See id.* at 1310.

[41] *See id.* at 1311.

[42] *See id.* at 1312.

person to conclude that Houck 'was tainted with evident partiality.'"[43] The appeals court, though, concluded that to show partiality, a party would have to demonstrate that the arbitrator had actual knowledge of the past contacts, not just that there could have been contacts.[44]

The appellate court rejected the district court's finding that a *reasonable perception* of partiality met the requirements of section 10(a).[45] In reversing the decision, the court set out two specific criteria for determining evident partiality. To show evident partiality on the part of an arbitrator, the person seeking vacatur would have to show "either (1) an actual conflict exists, or (2) the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists."[46] "Because Houck did not have actual knowledge of the information upon which the alleged 'conflict' was founded, the second 'evident partiality' condition is not present in this case."[47]

III. THE DETERMINATION OF PARTIALITY

The holding of *Gianelli* is in keeping with the general policy that the FAA provides for vacatur of an arbitration award only in extremely narrow circumstances.[48] This is a longstanding policy of arbitration as well: "Every presumption is in favor of the validity of the award."[49] In addition, vacatur under section 10(a)(2) of the FAA has been particularly difficult because the definition of evident partiality has been particularly elusive.[50]

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[43] *Id.* at 1311–1312.

[44] *See id.* at 1312.

[45] In vacating the arbitration, the district court had relied on *Schmitz v. Zilveti*, 20 F.3d 1043 (9th Cir. 1994). *See Gianelli*, 146 F.3d at 1312. The *Schmitz* court found that the arbitrator had a duty to investigate potential conflicts and disclose that his firm had performed legal work for one of the party's corporate parents. *See Schmitz*, 20 F.3d at 1048–1049. The court concluded that the failure of the arbitrator to perform this duty created a reasonable perception of partiality allowing for vacatur whether or not *actual* partiality existed. *See id.* at 1049.

[46] *Gianelli*, 146 F.3d at 1312 (citing Lifecare Int'l, Inc. v. CD Med., Inc., 68 F.3d 429, 433 (11th Cir. 1995)).

[47] *Id.* at 1313.

[48] *See* Richmond, Fredericksburg & Potomac R.R. Co. v. Transportation Communications Int'l Union, 973 F.2d 276, 278 (4th Cir. 1992) (stating that a "judicial review of an arbitration award is among the narrowest known to the law").

[49] Burchell v. Marsh, 58 U.S. (17 How.) 344, 350 (1855) (upholding an arbitration award).

[50] "'Evident partiality,' like obscenity, is an elusive concept: one knows it when

At the root of this uncertainty is the difficulty that courts have had in interpreting the only Supreme Court case addressing this issue. Most arguments for vacatur under section 10 of the FAA are based on the plurality opinion of Justice Black in *Commonwealth Coatings Corp. v. Continental Casualty Co.*[51] The plurality opinion of *Commonwealth Coatings* tried to determine the range of acceptable arbitrator partiality by determining "whether elementary requirements of impartiality taken for granted in every judicial proceeding are suspended when the parties agree to resolve a dispute through arbitration."[52] Justice Black seemed to indicate that the mere appearance of possible bias in an arbitrator was sufficient for vacatur on grounds of evident partiality under section 10(a)(2) of the FAA.[53] The implication is that arbitrators are subject to similar standards of impartiality as Article III judges. Under this standard, adopted only by a minority of courts, virtually any relationship between an arbitrator and a party would be open to a challenge.

In practice, however, vacatur of arbitral awards for partiality under section 10(a)(2) are generally unsuccessful.[54] "Although *Commonwealth Coatings* was the Supreme Court's first and only word on the matter,"[55] it has provided little true guidance. Even among the justices, there was disagreement as to the exact threshold requiring disclosure. Justice White, in his concurring opinion, "criticized the plurality's stringent disclosure requirements as undesirable as a matter of policy."[56]

The majority of United States courts considering the matter have

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one sees it . . . . No jurist has yet coined an exacting legal standard for 'evident partiality,' although many have tried." International Bhd. of Elec. Workers, Local Union No. 323 v. Coral Elec. Corp., 104 F.R.D. 88, 89 (S.D. Fla. 1985).

[51] 393 U.S. 145 (1968) (plurality opinion).

[52] *Id.* at 145. Although the court cited section 10(a) of the FAA as its reason for vacating the award, the main justification was derived from evident partiality in section 10(b). *See id.* at 147-149.

[53] *See id.* at 150. Note that at the time of the opinion, the "evident partiality" clause was in 9 U.S.C. § 10(b).

[54] *See* Eric Lucentini, Note, *Taking a Fresh Look at Vacatur of Awards Under the Federal Arbitration Act*, 7 AM. REV. INT'L ARB. 359, 360 (1996). The refusal of most courts to adopt an "appearance of bias" test is derived from their reluctance to interfere with a process defined by its consensual nature because parties to commercial arbitration have voluntarily opted out of the judicial system and therefore live with their decision. *See* Matthew D. Disco, *The Impression of Possible Bias: What a Neutral Arbitrator Must Disclose in California*, 45 HASTINGS L.J. 113, 115-119 (1993).

[55] Lucentini, *supra* note 54, at 360.

[56] *Id.*

generally adopted Justice White's approach.[57] Justice White in concurring did not want to decide what standard should be applied to arbitrators,[58] but rather thought that "[t]he judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality."[59] Courts have generally agreed that the mere appearance of bias standard of the *Commonwealth Coatings* plurality is too stringent.[60] One reason the parties prefer arbitration is the expertise of the arbitrator. The requirements of a certain level of expertise invariably leads to a small pool of arbitrators to choose from. Because of this, it would be impracticable to apply judicial standards for the disqualification of arbitrators. This would invariably lead to the disqualification of virtually every arbitrator. On the other hand, with too high a standard, such as proof of *actual* bias, it would be almost impossible to disqualify an arbitrator without a public announcement of partiality.[61] This is why courts have held that evident partiality exists when a "reasonable person would have to conclude that an arbitrator was partial to one of the parties in the arbitration."[62]

This does not mean that arbitrators are required to disclose every interest or bias which might affect their judgment. Arbitrators are not required to give "complete and unexpurgated" business biographies.[63]

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[57] *See, e.g.*, Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc., 10 F.3d 753, 760 (11th Cir. 1993); Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co., 991 F.2d 141, 146 (4th Cir. 1993) (stating that the mere appearance of bias by itself does not constitute evident partiality); Apperson v. Fleet Carrier Corp., 879 F.2d 1344, 1358 n.19 (6th Cir. 1989) (agreeing with the Second Circuit view that the *Commonwealth Coatings* plurality discussion of appearance of possible bias should be considered dicta); International Produce, Inc. v. A/S Rosshavet, 638 F.2d 548, 552 (2d Cir. 1981); United States Wrestling Fed'n v. Wrestling Div. of AAU, Inc., 605 F.2d 313, 319 (7th Cir. 1979) (treating Justice White's opinion as authoritative and Justice Black's as dictum); Dowd v. First Omaha Sec. Corp., 242 N.W.2d 36, 41 (Neb. 1993) (noting that courts have followed the reasoning in Justice White's concurrence in *Commonwealth Coatings* rather than the appearance of bias standard).

[58] *See Commonwealth Coatings*, 393 U.S. at 150 (stating that, in Justice White's view, "[t]he Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III judges, or indeed of any judges").

[59] *Id.* at 151.

[60] *See* Morelite Constr. Corp. v. New York City Dist. Council Carpenters Benefit Funds, 748 F.2d 79, 82-83 (2d Cir. 1984) (noting that the *Commonwealth Coatings* Court's failure to achieve consensus exhibits a source for continued uncertainty as to the appropriate standard to apply to arbitrator relationships).

[61] *See* Campbell, *supra* note 13, at 75.

[62] *Id.*

[63] *Commonwealth Coatings*, 393 U.S. at 151 (White, J., concurring); *see also*

However, the prudent practice is for arbitrators to "disclose fully all their relationships with the parties, whether these ties be of a direct or indirect nature."[64] Despite the nature of the challenged relationship, courts will often refuse to vacate when the relationship, although undisclosed, was known by the party or its employees[65] or where the parties failed to object in a timely manner.[66]

IV. THE ELEVENTH CIRCUIT APPROACH IN *GIANELLI*

In an apparent attempt to broaden the scope of review under section 10 of the FAA, the circuit court in *Gianelli* adopted the reasoning of the Ninth Circuit in *Schmitz v. Zilveti*.[67] The *Schmitz* reasoning subscribed to a strict reading of Justice Black's opinion which creates a duty to disclose similar to the appearance of bias as well as the actual partiality standards. The broad standard thus created is not all that different from the standards imposed by ethical canons, as is evident by the court's need to cite the NASD arbitration code[68] and several opinions on attorney conflicts of interest.[69]

Although *Schmitz* did cite Eleventh Circuit case law, the citation was for a tangential proposition and not for the core question of the factors which constitute evident partiality under the FAA.[70] The actual holding of *Schmitz* was contrary to the law of the Eleventh Circuit,[71] and adoption of the *Schmitz* rationale would mean adopting the minority of courts' broad

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Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 678 (7th Cir. 1983) (stating that the disclosure of every former social or financial relationship with a party or its principals is not required); Reed & Martin, Inc. v. Westinghouse Elec. Corp., 439 F.2d 1268, 1275 (2d Cir. 1971).

[64] Sanko S.S. Co. v. Cook Indus., Inc., 495 F.2d 1260, 1264 (2d Cir. 1973).

[65] *See* Cook Indus., Inc. v. C. Itoh & Co., 449 F.2d 106, 107–108 (2d Cir. 1971) (holding that a party could not challenge an arbitrator for bias where the party knew of an otherwise improper relationship).

[66] *See* Health Servs. Management Corp. v. Hughes, 975 F.2d 1253, 1263 (7th Cir. 1992) (holding that an objection made two months after first learning of the relationship between two out of three arbitrators and the prevailing party was untimely).

[67] 20 F.3d 1043 (9th Cir. 1994).

[68] *See id.* at 1049.

[69] *See id.*

[70] *See* Gianelli Money Purchase Plan & Trust v. ADM Investor Servs., Inc., 146 F.3d 1309, 1312 & n.1 (11th Cir. 1998).

[71] *See id.* at 1312.

interpretation of *Commonwealth*,[72] overruling Eleventh Circuit case law.[73] This the appellate court refused to do.

Thus, the appellate court clarified that the Eleventh Circuit follows the majority view of *Commonwealth*.[74] This view had been previously stated by the Eleventh Circuit in *Lifecare International, Inc. v. CD Medical, Inc.*[75] and *Middlesex Mutual Insurance Co. v. Levine*.[76] The affirmation of *Lifecare* is in keeping with a general reluctance to tamper with a process defined by its consensual nature, recognizing that one of the reasons for selecting arbitration over litigation is to subject the dispute to a tribunal with particular subject matter expertise. Indeed, the demand for pristine arbitrator impartiality is unrealistic because it is precisely the arbitrators' status as "men of affairs, not apart from . . . the marketplace"[77] that makes arbitration a speedy and inexpensive alternative to courtroom litigation. Under these circumstances, prior contact between one of the parties and the arbitrator is possible and perhaps even likely.[78] Therefore, courts tend to be amenable to the necessary trade-off between expertise and impartiality.[79]

The test laid out in *Lifecare* is objective. Evident partiality under the

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[72] Commonwealth Coatings Corp. v. Continental Cas. Co., 393 U.S. 145, 147–150 (1968).

[73] *See Gianelli*, 146 F.3d at 1312.

[74] *See id.* at 1312–1313.

[75] 68 F.3d 429 (11th Cir. 1995).

[76] 675 F.2d 1197 (11th Cir. 1982).

[77] *Commonwealth*, 393 U.S. at 150 (White, J., concurring).

[78] A relationship between the arbitrator and the party or its representatives is unlikely to receive vacatur of an award unless the alliance is out of the ordinary course of business and is so "intimate—personally, socially, professionally, or financially—as to cast serious doubt" on the arbitrator's impartiality. Drinane v. State Farm Mut. Auto. Ins. Co., 584 N.E.2d 410, 416 (Ill. App. Ct. 1991) (McMorrow, J., specially concurring) (citing Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 680 (7th Cir. 1983)).

[79] For example, the Second Circuit stated:

> Familiarity with a discipline often comes at the expense of complete impartiality. . . . [S]pecific areas tend to breed tightly-knit professional communities. Key members are known to one another, and in fact may work with, or for, one another, from time to time. As this court has noted, "[e]xpertise in an industry is accompanied by exposure, in ways large and small, to those engaged in it."

Morelite Constr. Corp. v. New York City Dist. Council Carpenters Corp., 748 F.2d 79, 83 (2d Cir. 1984) (quoting Andros Compania Maritima, S.A. v. Marc Rich & Co., 579 F.2d 691, 701 (2d Cir. 1978)).

FAA exists only when "(1) an actual conflict exists, or (2) the arbitrator knows of, but fails to disclose, information which would lead a *reasonable* person to believe that a potential conflict exists."[80] By adopting this objective test, *Gianelli* establishes a workable solution for the Eleventh Circuit.[81] Under this test, the actual existence of partiality is less important than disclosure in the first instance. Thus, the review of the court is limited to examining the nature of disclosure and the final outcome for fairness, not the process of the arbitration itself.[82] Additionally, although parties may bargain for additional arbitration terms, the FAA itself only provides for arbitral review in very narrow circumstances.[83]

Gianelli is consistent with the emerging standard that "a reasonable

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[80] Gianelli Money Purchase Plan & Trust v. ADM Investor Servs., Inc., 146 F.3d 1309, 1312 (11th Cir. 1998) (emphasis added).

[81] This objective test is more akin to what has been labeled as "active" partiality meaning that the arbitrator has *acted* in a manner suggesting partiality. *See* 3 IAN MACNEIL ET AL., *supra* note 8, § 28.8.

[82] This is not to say that higher standards may not be applied by the parties. Certainly the rules employed by private arbitration institutions such as the NASD, the AAA, as well as the AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes, provide extensive disclosure. For example, section 19 of the AAA Commercial Arbitration rules considers "any past" relationship of an arbitrator with the parties or their representatives to constitute a "circumstance likely to affect impartiality" which must be disclosed. AAA COMMERCIAL ARBITRATION RULES § 19 (1996). The AAA/ABA Code of Ethics is even more stringent, requiring arbitrators to avoid any "financial, business, professional, family or social relationship" which could "reasonably create the impression of partiality or bias." AAA/ABA CODE OF ETHICS FOR ARBITRATORS IN COMMERCIAL DISPUTES Canon I (1977); *see also* discussion *supra* note 18.

[83] Judge Posner noted:

> [E]ven if the failure to disclose was a material violation of the ethical standards applicable to arbitration proceedings, it does not follow that the arbitration award may be nullified judicially. Although we have great respect for the Commercial Arbitration Rules and the Code of Ethics for Arbitrators, they are not the proper starting point for an inquiry into an award's validity under section 10 of the United States Arbitration Act and Rule 60(b) of the Federal Rules of Civil Procedure.
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> . . . [A commercial arbitration service] may set its standards as high or as low as it thinks its customers want. The statute has a different purpose—to make arbitration effective by putting the coercive force of the federal courts behind [it] . . . .

Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 680-681 (7th Cir. 1983).

person would have to conclude that the neutral arbitrator was partial or exhibited conduct, attitude, or disposition favoring one party for vacation to be proper."[84] The purpose of arbitration is not to recreate a judicial setting, but to arrive at economical and fair results in an alternative setting.[85] By narrowing judicial inquiry of the arbitral process, the courts help to reinforce the validity of this alternative forum by giving it a strong degree of finality.

V. CONCLUSION

The Eleventh Circuit's holding clarifies the trend of the courts in reviewing partiality in arbitration. The court set out a simplified inquiry requiring either actual conflict or failure of the arbitrator to disclose information that would lead a reasonable person to believe that a potential conflict exists. Therefore, the emphasis is on ensuring an equitable bargaining position and not on procedural review. In so doing, the Eleventh Circuit reaffirmed the fundamental purpose of arbitration, which is "to relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that would be speedier and less costly than litigation."[86]

Eric M. Sommers

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[84] Deseriee A. Kennedy, *Predisposed with Integrity: The Elusive Quest for Justice in Tripartite Arbitrations*, 8 GEO. J. LEGAL ETHICS 749, 775 (1995). This article offers a good overview of arbitrators' ethical roles. *See id.* at 773–781.

[85] "The purpose of the Federal Arbitration Act [is] to relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that would be speedier and less costly than litigation." O.R. Sec., Inc. v. Professional Planning Assoc., Inc., 857 F.2d 742, 745 (11th Cir. 1988) (citing Ultracashmere House, Ltd. v. Meyer, 664 F.2d 1176, 1179 (11th Cir. 1981)).

[86] *Id.*